



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding. The Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent.

At the beginning of the hearing the Landlord confirmed that he had not served the Tenant with a copy of his application and notice of hearing. Consequently, the Landlord's application is dismissed with leave to reapply. The Landlord said that he did not receive a copy of the Tenant's application in this matter, however, he agreed to waive service and continue with the hearing.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on September 1, 2008 at which time the Tenant rented Suite B in the rental property for \$600.00 per month. As of December 31, 2008, the Tenant had rent arrears of \$1,100.00 according to the Tenant and \$1,250.00 according to the Landlord.

In January of 2009, at the request of the Tenant, the Landlord agreed to rent Suite A in the rental property to the Tenant for \$1,000.00 per month. The Landlord said he told the Tenant if she made her rent payments on time he would forgive her previous rent arrears. The Landlord also said he agreed to reduce the rent from \$1,200.00 to \$1,000.00 per month if the Tenant would keep up on the maintenance in the rental unit and paint one room per month. Both Parties agree that the Tenant fell into arrears which by June 2, 2009 amounted to \$2,342.00. The Parties also agree that the Tenant did not do any painting. Consequently, on June 2, 2009, the Landlord served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent dated June 2, 2009. The Tenant paid \$221.00 at the end of June 2009 bringing the arrears to \$2,121.00 which remains unpaid.



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The Tenant claimed that Suite A was very dirty when the previous tenants moved out and that it took her 3 weeks to clean it before she could move in. The Tenant said she spoke to the Landlord about this at some point in February 2009 and he agreed that she should be compensated \$2,000.00 for this work. The Tenant admitted the Landlord did not agree to set off this amount from her rent. The Landlord denied that he spoke to the Tenant about compensating her further. The Landlord said there was only one agreement and that was to reduce the rent by \$200.00 per month in exchange for the Tenant doing cleaning/maintenance and painting. The Landlord claimed that the previous tenants did much of the clean up.

Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. The Tenant applied to set aside the Notice on June 5, 2009, however, I find that there are no grounds for allowing her application as I find that there are arrears of rent that remain unpaid. Consequently, the Tenant's application to set aside the 10 Day Notice dated June 2, 2009 is dismissed. The Landlord requested and I find pursuant to s. 55(1) of the Act that he is entitled to an Order of Possession to take effect at 1:00 p.m. on July 8, 2009.

Conclusion

The Tenant's application is dismissed. The Landlord's application is dismissed with leave to reapply. An Order of Possession to take effect on July 8, 2009 has been issued to the Landlord and a copy of it must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 07, 2009.

Dispute Resolution Officer